Supreme Court, U.S.
FILED

03 . 27 JUN 30 2003

No. _____ OFFICE OF THE CLERK

In the Supreme Court of the United States

VASKEN TATARIAN,

Petitioner,

v.

WILLIAM G. SWEENEY, VICTOR J. KALETA, AND CITY OF ANAHEIM,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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27 pp

QUESTIONS PRESENTED

1. Does the holding of this Court in Montana v. United States, 440 U.S. 147, 59 L.Ed.2d 210, 99 S.Ct. 970 (1979), that the doctrines of res judicata and collateral estoppel bar subsequent litigation involving the same issues, apply to constitutional challenges based upon the First Amendment to particular provisions of a municipal code which were not expressly challenged in a prior lawsuit?

2. Should res judicata apply to deprive the owner of an adult entertainment business of the right to assert constitutional defenses to an adult business license requirement - the constitutionality of which he never previously specifically litigated or challenged - because in a prior suit, he unsuccessfully made a general assertion of the facial invalidity of the City's entire 16 page ordinance regulating adult businesses?

3. Where a circuit Court of Appeals issues a major opinion (e.g. Baby Tam v. City of Las Vegas, 154 F.3d 1097 (9th Cir. 1998) establishing that most municipal ordinances imposing license requirements on adult entertainment businesses are facially invalid prior restraints of expression, and such decision issues after finality of a civil rights lawsuit asserting a broad - but unsuccessful facial challenge to a 16 page municipal ordinance regulating adult entertainment businesses, does the annunciation of such a controlling change in the case law constitute an exception to the doctrine of res judicata which would therefore allow a second more narrow suit to proceed, challenging the unconstitutionality of the adult business license requirement based upon the new decision?

PARTIES TO THE PROCEEDINGS

Petitioner

Vasken Tatarian is the owner of the Flamingo Adult Theater in Anaheim, California.

Respondents

William G. Sweeney is the license collector of the City of Anaheim. Victor J. Kaleta is the hearing officer for the City of Anaheim. The City of Anaheim is a municipal corporation existing under the laws of the State of California.

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Vasken Tatarian, doing business as the Flamingo Theater, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered on January 30, 2003. On April 3, 2003 the Ninth Circuit denied a Petition for Rehearing and Rehearing En Banc.

OPINIONS BELOW

The order of the Ninth Circuit Court of Appeals denying the Petition for Rehearing and Rehearing En Banc filed April 3, 2003 is reprinted in Appendix A hereto ("App. A") at page 1a. The Memorandum Opinion and Judgment of the Ninth Circuit Court of Appeals filed January 30, 2003 are reprinted in Appendix B hereto ("App. B") at page 2a. The judgment of the District Court is Appendix C hereto ("App.C") at page 3a.

JURISDICTION

This Court has certiorari jurisdiction by virtue of Title 28, United States Code, Section 1254. Rule 13 (3) of this Court's Rules provides that this Petition may be filed within 90 days of the date the Ninth Circuit denied the Petition for Rehearing. The Ninth Circuit denied a timely Petition for Rehearing on April 3, 2003.

CONSTITUTIONAL PROVISIONS INVOLVED IN CASE

The First Amendment to the United States Constitution provides, in part, as follows:

> Congress shall make no law . . . abridging the freedom of speech. . . .

The Fourteenth Amendment to the United States Constitution provides, in part, as follows:

> No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . ."

Article III, Section 1 of the United States Constitution provides, in part, as follows:

> "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time-to-time ordain and establish. . . ."

Article III, Section 2 of the United States Constitution provides, in part, as follows:

> " The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . ."

STATEMENT OF THE CASE

On September 29, 1994 the City of Anaheim issued to Petitioner a permit to allow him to operate a theater wherein he would present strip tease type dancing recognized by this Court as being protected the First Amendment, City of Erie v. Pap's A.M., 529 U.S. 277, 146 L.Ed.2d 265, 120 S.Ct. 1382 (2000) and Barnes v. Glen Theater, Inc., 501 U.S. 560, 115 L.Ed.2d 504, 111 S.Ct. 2456 (1991). At the time the Anaheim Angels had not yet won the World Series nor had the Anaheim Mighty Ducks reached the seventh game of the Stanley Cup finals.

In 1996 Petitioner brought a civil rights lawsuit against the City of Anaheim (Tatarian v. City of Anaheim, C.D.Cal. No. SA CV - 96-280 GLT in which he challenged the facial validity of three distinct aspects of the City's comprehensive scheme for the regulation of adult businesses, all of which were contained in Chapter 18.89 of the Anaheim Municipal Code. Although certain portions of the complaint were broadly drafted to erroneously suggest that the object of the lawsuit was a challenge to the entirety of Chapter 18.89 (a chapter involving many scores of paragraphs of distinct and unrelated ordinance provisions and restrictions), it is clear upon reading the entire complaint that this first lawsuit only challenged three distinct portions of Chapter 18.89: (1) the provisions which authorized city officials to conduct unscheduled inspections of adult businesses; (2) the provision which imposed hours of operations restrictions on adult businesses; and (3) the former provisions prohibiting adult business from making even minor internal physical changes in their structure not reflected in their previously submitted floor plan. On November 3, 1997 District Judge Gary L. Taylor granted the City's motion for summary judgment with respect to the three provisions described above.

On August 13, 1998 of the following year, City license collector William G. Sweeney ("Sweeney") sent Petitioner a letter informing him of his decision to revoke the permit based upon the alleged violations of certain provisions of the Anaheim Municipal Code, none of which had been challenged in the first federal lawsuit. Respondent Victor J. Kaleta ("Kaleta") conducted administrative hearings which culminated in a final administrative order issued on January 14, 1999 revoking Petitioner's permit and denying his application for the renewal of his prior permit. In response Petitioner filed a second civil rights lawsuit against the City of Anaheim, Tatarian v. City of Anaheim, C.D. Cal. No. SA

CV-99-605 (AHS), the instant lawsuit. In this second lawsuit, which is the subject of this Petition for Writ of Certiorari, Petitioner combined a number of civil rights claims seeking prospective declaratory and injunctive relief. Administrative Mandamus was also sought to challenge the permit revocation order. Up until this point Petitioner had always possessed the required permit and had never filed any challenge in any court or administrative proceeding attacking the constitutionality of the permit requirement. Nor had Petitioner ever asserted the unconstitutionality of the City's permit revocation proceedings. He presented such claims, for the first time, in his second federal lawsuit along with a variety of other claims for declaratory and injunctive relief.

One of the major legal contentions in the second federal lawsuit was based upon the recent decision of the Ninth Circuit Court of Appeals in Baby Tam & Co., Inc v. City of Las Vegas, 154 F.3d 1097 (9th Cir. 1998), which held that licensing requirements for adult entertainment businesses were facially unconstitutional under the First Amendment if they failed to guarantee that any judicial review of the license denial would occur within a fixed an reasonably brief period of time. The Ninth Circuit decision in Baby Tam & Co. v. City of Las Vegas, supra, was filed on September 10, 1998, one month after the revocation proceedings were initiated in this case.

After the second federal lawsuit had been pending for over one year, the City filed a motion to dismiss asserting that the first lawsuit had constituted a facial challenge to the entire City's Chapter 18.89. The City alternatively argued that even if the first federal lawsuit were construed as having constituted a facial challenge only to three specific ordinance provisions, res judicata would apply none the less on the theory that the claims made in the second federal lawsuit

could have been raised in the first lawsuit even if they were not.

The federal district court judge to whom the second case was assigned, Alicemarie Stotler, agreed with Petitioner that the first lawsuit was a facial challenge only to three distinct subsections of the Anaheim chapter dealing with adult businesses. However, Judge Stotler dismissed the remaining constitutional challenges on the theory that they could have been brought in the first lawsuit even if they were not in fact brought in that first lawsuit. On August 6, 2001 the district court dismissed Petitioner's lawsuit. Petitioner filed a timely Notice of Appeal on September 4, 2001.

On January 30, 2003 the Ninth Circuit handed down its unpublished Memorandum Decision which affirmed the district court but for opposite reasons than those upon which the district court relied. Specifically, the Ninth Circuit expressly declined to address the district court's novel theory that the bringing of a facial constitutional challenge to one portion of a multi-page ordinance permanently precludes one from bringing facial constitutional challenges to other sections of that same ordinance. The Ninth Circuit agreed with the City's original contention, which was not accepted by the district court, that Petitioner should be bound by the unfortunately broad language of the complaint in the first federal lawsuit.

On April 3, 2003 the Ninth Circuit denied Petitioner's timely Petition for Rehearing.

REASON FOR GRANTING THE WRIT

CERTIORARI SHOULD BE GRANTED TO RESOLVE THE CONFLICT BETWEEN THIS COURT'S DECISIONS IN MONTANA v UNITED STATES, 440 U.S. 147 (1979) AND FEDERATED DEPARTMENT STORES, INC. v. MOITIE, 452 U.S. 394 (1981) AS TO WHETHER A CHANGE IN APPLICABLE CONSTITUTIONAL CASE LAW CONSTITUTES AN EXCEPTION TO THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL

In 1979 this Court decided Montana v. United States, 440 U.S. 147, 59 L.Ed.2d 210, 99 S.Ct. 970 (1979). In the case a Government contractor, at the direction of the United States, filed a lawsuit in a Montana state court attacking the constitutionality of Montana's imposition of a one percent gross receipts tax upon contractors of public, but not private, construction projects. After the Montana Supreme Court upheld the tax, and at the Solicitor General's direction, the contractor abandoned its request for review by this United States Supreme Court. Thereafter, in another lawsuit challenging the constitutionality of the tax, also financed and directed by the government, a three judge federal district court ruled that the United States Government was not bound by the Montana Supreme Court's decision and that the tax violated the supremacy clause. On appeal to this Court, this Court held that the prior judgment by the Montana Supreme Court upholding the tax precluded the United States Government from contesting its constitutionality.

In his opinion for the Court, Justice Marshall noted that there could be an exception to the general principle of estoppel. Justice Marshall, speaking for the Court, stated,

> "The sole remaining question is whether the particular circumstances of this case justify an exception to the general principles of estoppel. . . . [W]hen issues of law arise in successive actions involving unrelated subject matter, preclusion may be inappropriate . . . This exception is of particular importance in constitutional adjudication. Unreflective invocation of collateral estoppel against parties with an on going interest in constitutional issues could freeze doctrine in areas of the law where responsiveness to changing patterns of conduct or social mores is critical. . . ."

Then Associate Justice Rehnquist filed a short concurring opinion:

> " I join the Court's opinion on the customary understanding that its references to law review articles and drafts or finally adopted versions of the Restatement of Judgments are not intended to bind the court to the views expressed therein on issues not presented by the facts of this case."

See Montana v. United States, supra, 440 U.S. at 164, 99 S.Ct. at 979.

Justice White filed a dissenting opinion.

Two years later Federated Department Stores, Inc.v Moitie, 452 U.S. 394, 69 L.Ed.2d 103, 101 S.Ct. 2424 (1981) came before this Court. Then Associate Justice Rehnquist delivered the opinion for the Court. The case did not involve a constitutional law question. Rather, the case involved anti trust litigation. This Court departed from its prior precedent and concluded that there was no exception to res judicata merely because of a change in the controlling appellate case law. However, this Court's opinion in the Moitie case did not involve a change in constitutional case law, but merely in the case law interpreting the meaning of a federal statute. The case did not involve any deprivations of fundamental constitutional rights and accordingly did not include of the requisite constitutional analysis which should precede some momentous a determination as to whether the judge - made doctrine of res judicata can deprive persons of the benefits of fundamental rights conferred by the United States Constitution. In contrast this Court addressed precisely this issue in the related context of collateral estoppel and concluded that changes in the applicable constitutional case law do constitute an exception to the judge made doctrine of collateral estoppel. See Montana v. United States, 440 U.S. 147, 162-163 (1979).

Certiorari should be granted so that this Court can decide whether the exception set forth in Montana v. United States has survived Federated Department Stores, Inc. v. Moitie.

This is a case that justifies review by this Court. The question is whether or not one may lose a fundamental constitutional right to challenge an invalid ordinance because there was not a legally sufficient reason to challenge the provisions in a prior lawsuit. More importantly, this case involves the question of whether or not parties adversely affected by unconstitutional ordinances may seek to relitigate

the constitutionality of those ordinances after there has been a significant change in controlling appellate constitutional case law in the applicable jurisdiction. In this particular case the Ninth Circuit's decision in Baby Tam & Co. v. City of Las Vegas, 154 F.3d 1097 (9th Cir. 1998) was the significant change in the Ninth Circuit law. The Ninth Circuit below relied upon this Court's decision in Federated Department Stores, Inc. v. Moitie, supra, for the proposition that an intervening change of law does not alter the judgment's preclusive effect.

The Ninth Circuit stated that Petitioner had standing to challenge the permit revocation scheme in his prior lawsuit but at the time the prior lawsuit was filed there was no revocation matter pending against him.

Probably the best example of the reversal of a constitutional holding where collateral estoppel and res judicata clearly should not apply is this Court's decision in Buckley v. American Constitutional Law Foundation, 525 U.S. 182, 142 L.Ed.2d 599, 119 S.Ct. 636 (1999). To bring this Court's decision in the Buckley case into proper focus we must turn to an earlier decision by the California Court of Appeal in Browne v. Russell, 27 Cal.App.4th 1116; 33 Cal.Rptr. 2d 29 (1994). Browne v. Russell involved the adoption by the City of Los Angeles of an ordinance prohibiting smoking in restaurants. Pursuant to a Los Angeles City Charter provision, the tobacco industry circulated a referendum petition to have the ordinance adopted by the City Council to be reviewed by the voters of the City of Los Angeles. According to the Los Angeles City Charter, if sufficient signatures are obtained on a referendum petition with respect to a particular ordinance, that ordinance does not become effective until the electorate has the opportunity to vote on the measure. If the voters approve the measure the

ordinance becomes law. If the voters reject the ordinance in the referendum election the ordinance is defeated.

The City Clerk of the City of Los Angeles invalidated a number of signatures of persons who had apparently signed the referendum petition because the circulators of the petitions were not registered voters in the city as required by a provision of the Elections Code of the City of Los Angeles. In order for the referendum measure to qualify for the ballot a large number of signatures of registered voters in the City of Los Angeles was required.

The parties who sought to qualify the referendum petition for the ballot (basically the tobacco industry) filed a lawsuit against the City Clerk to compel the City Clerk to count the signatures notwithstanding the fact that they were contained on petitions that were circulated by non registered circulators. The trial court (Los Angeles County Superior Court) found the Los Angeles City Elections Code unconstitutional to the extent that it required the petitions to be circulated by registered voters. The trial court ordered the City Clerk to count the signatures. The City Clerk obeyed the trial court order and determined that the additional signatures that had previously been disqualified resulted in the measure qualifying for the ballot.

Both the City Clerk as well as certain interveners who opposed smoking in public places and who supported the ordinance and opposed the referendum appealed the trial court's decision ordering the clerk to count the signatures, which would have resulted in the measure being placed upon the ballot for the electorate to decide. The California Court of Appeal granted an emergency writ of supersedeas blocking the order of the trial court pending the outcome of the appeal. After the parties fully briefed the issues before the State Court

of Appeal and just a week before oral argument, the Governor of the State of California signed into law a statewide measure prohibiting smoking in restaurants throughout the state. Essentially this newly adopted state law mooted the issue because it no longer mattered whether the City of Los Angeles was banning smoking in restaurants since the State of California was doing likewise throughout the entire state. Therefore it became irrelevant whether the voters of the City of Los Angeles approved or disapproved of the ordinance prohibiting smoking in restaurants. The parties filed a joint stipulation to dismiss the appeal on the ground the appeal was moot as was the referendum. The stipulation provided that the City Clerk as well as the tobacco industry proponents of the measure had no further interest in pursuing the referendum or seeking to have the City Clerk certify the Petition. In other words, the tobacco industry referendum proponents had no more interest in pursuing the case.

Notwithstanding this fact the Court of Appeal decided to go ahead and resolve the issue on the merits. That is, the Court of Appeal stated that because the matter was of public interest the Court of Appeal wanted to decide whether or not the trial court was correct in invalidating the provision of the Municipal Code that required the circulators of the petition to be registered voters. The Court of Appeal reversed the trial court and concluded that the Elections Code provision was constitutional. The Court of Appeal was of the opinion that the First Amendment was not violated by a Los Angeles Municipal Code provision that prohibited non registered voters from circulating referendum petitions. Naturally, since the case had been rendered moot no petition for review was filed with the California Supreme Court and no one sought review in this Court.

About four and a half years later the same issue came before this Court in Buckley v. American Constitutional Law Foundation, supra. This Court ruled in the Buckley case that a Colorado statute which prohibited non registered voters from circulating an initiative petition in Colorado was unconstitutional in violation of the First Amendment. It is absolutely clear that under this Court's decision in Buckley v. American Constitutional Law Foundation, supra, that the California Court of Appeal's decision in Browne v. Russell, supra, is simply not good law.

However, if the decision of the Ninth Circuit below is correct and if the decision of this Court in Federated Department Stores, Inc., v. Moitie, has eliminated the exception that this Court recognized in Montana v. United States, supra, then the tobacco industry in California is forever barred from circulating initiative or referendum petitions by non registered voters. Clearly in the City of Los Angeles the tobacco industry would be barred from seeking to relitigate the issue which it lost in Browne v. Russell, supra. Indeed, the tobacco industry no longer had any motivation to pursue the case in Browne v. Russell because the issue had been rendered moot but the Court of Appeal went ahead and decided the issue any way. Would this Court declare that the doctrines of res judicata and collateral estoppel perpetually bar the tobacco industry from relitigating the issue of whether non registered voters can circulate petitions?

This issue is worthy of review by this Court. Otherwise this Court's decision in Federated Department Stores, Inc. v. Moitie, will continue to be used by lower courts to bar First Amendment challenges to local ordinances.

Clearly in California Buckley v. American Constitutional Law Foundation, supra, overruled Browne v. Russell

although the case was not cited in the Buckley opinion because the Browne v. Russell case was a California Court of Appeal decision and was not directly related to the Colorado initiative petition process. However, obviously this Court's decisions have great impacts and what better case exists than this one to allow this Court to declare that there is still a constitutional exception to the res judicata and collateral estoppel doctrines for First Amendment litigation.

CONCLUSION

For the foregoing reasons, Petitioner respectfully urges this Honorable Court to grant the Petition for Writ of Certiorari and reverse the judgment below.

Respectfully submitted,

ROGER JON DIAMOND
Attorney for Petitioner

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 01-56606
D.C. No. CV-99-00605-AHS

[Filed April 3, 2003]

VASKEN TATARIAN,
Plaintiff-counter-defendant-Appellant,

v.

WILLIAM G. SWEENEY; VICTOR J. KALETA, in his official capacity,
Defendants-Appellees,

CITY OF ANAHEIM,
Defendant-counter-claimant-Appellee.

Before **FRIEDMAN***, **KOZINSKI** and **RAWLINSON**, Circuit Judges.

* Daniel M. Friedman, Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

ORDER

The petition for rehearing and rehearing en banc is DENIED. Fed. R. App. P. 35, 40.

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 01-56606

[Filed January 30, 2003]

VASKEN TATARIAN,
Plaintiff-counter-defendant-Appellant,

v.

WILLIAM G. SWEENEY; VICTOR J. KALETA, in his official capacity,
Defendants-Appellees,

CITY OF ANAHEIM,
Defendant-counter-claimant-Appellee.

Appeal from the United States District Court
for the Central District of California
D.C. No. CV-99-00605-AHS
Alicemarie H. Stotler, District Judge, Presiding

MEMORANDUM*

Before FRIEDMAN**, KOZINSKI and RAWLINSON, Circuit Judges.

We do not reach Tatarian's argument that res judicata does not preclude successive facial challenges to different provisions of a single ordinance, because his first suit by its terms challenged the entire ordinance. His complaint alleged that "Ordinance No. 18.89 [sic], enacted by the City of Anaheim on October 5, 1993, and/ or the specific provisions outlined hereinabove are invalid and void," and sought "a declaration as to whether or not Ordinance No. 18.89 is constitutionally valid or invalid." Compl. P 12 (emphasis added). The district court construed the suit as "challenging the City of Anaheim's conditional use permit ("CUP") ordinance, codified as Title 18, Chapter 18.89 ... of the Anaheim Municipal Code." Order at 1. Tatarian's failure to support his claim with legal arguments pertinent to most of the ordinance's provisions does not alter the scope of his claim. Even if he is correct that his prior counsel "chose unfortunately loose and overbroad language," Reply Br. at 14, Tatarian is bound. Because Tatarian's current suit raises claims he brought in his first suit, it is barred by res judicata. *See In re Jenson*, 980 F.2d 1254, 1256(9th Cir. 1992).

Baby Tam & Co. v. City of Las Vegas, 154 F.3d 1097(9th Cir. 1998), does not change this result. Intervening changes

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** Daniel M. Friedman, Senior United States Circuit Judge for the Federal Circuit, sitting by designation.

of law generally do not alter a judgment's claim preclusive effect. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 69 L. Ed. 2d 103, 101 S. Ct. 2424(1981). District courts retain equitable authority to modify their own injunctions under Rule 60(b), *see Clifton v. Attorney Gen. of Cal.*, 997 F.2d 660, 662-63(9th Cir. 1993), and issue preclusion on a point of law may not survive a change in that law, *see Montana v. United States*, 440 U.S. 147, 162-63, 59 L. Ed. 2d 210, 99 S. Ct. 970(1979), but neither principle applies here.

Tatarian had standing to challenge the permit revocation scheme in his prior suit. The city had alleged numerous violations of the "no-touch" rule and thus had grounds to seek to revoke his license. The absence of a final determination of guilt is irrelevant because subsection .0206 requires only a violation, not a conviction. Revocation was not so speculative a prospect that he lacked standing. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 233-36, 107 L. Ed. 2d 603, 110 S. Ct. 596(1990). Finally, *Younger v. Harris*, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S. Ct. 746(1971), might have barred a challenge to the no-touch rule, but that rule is not at issue on appeal.

Tatarian's mandamus claim seeks only a new remedy to vindicate the same cause of action, and is therefore barred. *See McClain v. Apodaca*, 793 F.2d 1031, 1034(9th Cir. 1986). Tatarian waived his argument that he lacked standing to challenge the permit requirement under *Clark v. City of Lakewood*, 259 F.3d 996(9th Cir. 2001), because he raised it for the first time in his reply brief. *See United States v. Alexander*, 287 F.3d 811, 817 n.2(9th Cir. 2002). Tatarian

concedes that his grandfather rights claim is moot if his other claims fail.

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

NO. SA CV 99-60SAHS (Eex)

[Filed August 2, 2001]

VASKEN TATARIAN,
Plaintiff,

v.

CITY OF ANAHEIM,
Defendant

VASKEN TATARIAN,
Petitioner,

v.

CITY OF ANAHEIM, WILLIAM G. SWEENEY, in his official capacity only as License Collector of the City of Anaheim, and VICTOR J. KALETA, in his official capacity only as Hearing Officer designated under A.M.C. S. 18.89.080.040,
Respondents.

JUDGMENT

On April 17, 2000, this Court granted partial summary judgment in favor of the Defendant/Respondents on plaintiff's claims 1, 3, 6, 14, and a portion of its claim 15, in plaintiff's first amended complaint, all based upon the doctrine of res judicata;

On December 6, 2001, this Court dismissed the Sixteenth Cause of Action in plaintiff's second amended complaint on the basis of res judicata.

On March 21, 2001, this Court dismissed claims 1, 3, 6, 14 and portions of 15 as re-asserted in plaintiff's second amended complaint, again, all on the basis of res judicata.

On March 21, 2001, this Court also dismissed claims 2 and 7 as re-asserted in plaintiff's second amended complaint.

On July 13, 2001, the Court signed and filed an order dismissing without prejudice all of the remaining claims in this case.

IT IS ORDERED AND ADJUDGED that the plaintiff take nothing, that the action be dismissed on the merits and that Defendant/Respondents City of Anaheim, William G. Sweeney and Victor J. Kaleta recover their costs.

Dated: August 1, 2001 /s/_____
Hon. Alicemarie H. Stotler
U.S. District Court Judge